Supreme Court, U. S.
FILED
AUG 14 1974
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1962

JOSEPH BERMAN,

Petitioner

v.

GROUP HEALTH ASSOCIATION, INC.,

Respondent

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

REPLY BRIEF FOR THE PETITIONER

JOSEPH BERMAN, Petitioner
Apt. 11-B, 5200 Boardwalk
Ventnor, N.J. 08406

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1973

No. 73-1962

JOSEPH BERMAN, PETITIONER

v.

GROUP HEALTH ASSOCIATION, INC., RESPONDENT

On Petition for a writ of Certiorari to the
District of Columbia Court of Appeals

REPLY BRIEF FOR THE PETITIONER

Respondent, in its "Memorandum for the Respondent in Opposition" states as to the issue of JURISDICTION (Respondent at page 2);

> The court below considered these issues so insubstantial as not to warrant any comment.

Respondent presumes to speak for the court below. Petitioner would be less presumptuous if he were to state that the Court of Appeals stayed away from the issue because of its complexity and importance, with the hope that it thus would be

ended. Petitioner does not propose to speak for the court. Certainly the issue is not yet completely settled as can be seen from the abundance of recent litigation. Respondent refers to several cases dealing with "jurisdiction", petitioner cites others, and many more have been litigated.

Secondly, as to the issue of the "Contract" or the "Bylaws" of GHA, respondent quotes, on pages 1 and 2 in its opposition the alleged wording of Article II, Section 2;5(5) of the "bylaws" of GHA. This quotation is not found in any part of respondent's evidence in the trial court. The District of Columbia Court of Appeals culled this paragraph from unsworn argument (Points and Authorities) presented to the trial court and transmitted to the court of appeals as "part of the record" contrary to petitioner's request. Respondent repeats this paragraph in his Opposition without indicating that it is not part of the evidence. Surely our courts do not accept argument as evidence, and the courts below certainly erred in so doing. Whatever the wording of the bylaw, respondent admits, as was pointed out in the Petition (page 14), that it was illegally "promulgated".

For these reasons and the more detailed reasons set out in the Petition, petitioner prays that this Court grant the writ of certiorari sought.

Respectfully submitted,

JOSEPH BERMAN, Petitioner

I hereby certify that 3 copies of this Reply was mailed this 12th day of August, 1974, to Joel M. Savits, attorney for respondent.